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SooperKanoon Citation : sooperkanoon.com/462357

Court : Allahabad

Decided On : May-18-1926

Reported in : AIR1926All673

Appellant : Binda

Respondent : Mangala and ors.

Judgement :

Daniels, J.

1. This is a suit by one Binda to set aside a decree passed against himself and his brother Girwar, on the ground that he was not properly represented in that suit. The suit was filed by the elder brother Girwar on his own behalf and as next friend of the present plaintiff Binda, who was alleged to be a minor. It now turns out that Binda attained majority one month before the suit was filed. It appears that Binda and his brother have a common interest, and it is further found by the Court below that Binda came to Court with Girwar and assisted to look after the suit. Under these circumstances, the Courts below, following the ruling in Ganga Ram v. Mihin Lal (1906) 28 All 416, have held that the plaintiff is not entitled to get the decree set aside.

2. The case relied on was a case in which a defendant was impleaded as a minor under the guardianship of his mother. He and his mother jointly defended the suit, and at no period did he raise the objection that he was not a minor when it was

instituted. This Court held that it was not competent for the defendant to sue subsequently to have the decree declared not binding on the ground that he was in fact of full age when it was instituted. The appellant in this Court distinguishes this case on the ground that it was the case of a defendant and not of a plaintiff and relies on the rulings in *Sheorania v. Bharat Singh* (1898) 20 All 90 and *Ruhul Amin v. Shanker Lal* AIR 1924 All 54. The former was a case in which a plaint was instituted on behalf of an alleged minor by one Lachhmi Narain, although the alleged minor was of full age when the plaint was filed. The Court found that the whole proceedings were carried on by Lachhmi Narain a man who had no interest whatever in the property in suit, and had no cause of action against the defendant. It held, therefore, that there was really no suit on behalf of the plaintiff at all and therefore the decree was not binding on him. The case of *Ruhul Amin v. Shankar Lal* AIR 1924 All 54 was similar. There also it was held that there was no valid plaint before the Court and, therefore, the whole proceedings were without jurisdiction.

3. In neither of those cases was the circumstance present that the alleged minor himself took an active part in the prosecution of the suit, and in both cases there was only one plaintiff. In the present case, there certainly was a valid plaint before the Court on behalf at any rate of the plaintiff Girwar. In our opinion, this is a clear case of estoppel against the appellant. If the plea of majority had been taken in the trial Court, the plaint might have been amended and the difficulty removed. By taking an active part in the prosecution of the case without raising any objection to the legality of the plaint, the appellant clearly placed the respondents at disadvantage, and it is not open to him now that a decree has been passed, to come into Court and allege that the decree is a nullity and not binding on him. In our opinion the decree of the Court below is correct, and we accordingly dismiss this appeal with costs.